

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 3737 - HB 3775

March 11, 2012

SUMMARY OF BILL: Narrows the existing exemption of a public utility or wireless communications provider to protect the utility or provider from criminal liability for interception of cellular or cordless transmissions only where their acts, otherwise prohibited, are for technological research related solely to the construction, maintenance, or operation of the services and facilities of the public utility. Authorizes a telecommunications carrier to collect, receive, store, aggregate, use, rent, sell, release, or disclose personally identifiable information relating to any subscriber, subscriber household, or of a subscriber terminal under certain enumerated circumstances. Requires the carrier to notify the subscriber of the circumstances under which such information may be collected, used, or disclosed. Entitles a subscriber, upon written request to the carrier, to disclosure of all such information held by the carrier. Authorizes a subscriber to withdraw subscriber's permission, if previously given, at any time through an established procedure. Prevents the carrier from refusing service to any person who refuses to consent to use of their personally identifiable information. Requires a carrier to obtain the subscriber's affirmative consent to sell or disclose the information to a third party except under the enumerated circumstances. Restricts use of the information by the third party. Prevents disclosure of information derived from any signal of an upstream communications channel without written authorization from the subscriber. Prohibits interception of such signal except under limited circumstances. Authorizes examination of aggregate data by, or disclosure to, a third party provided the data contains no personally identifiable information. Any person who violates the provisions of this bill will be liable to the aggrieved subscriber for all actual damages in no event less than \$500, regardless of the amount proven, plus costs, disbursements, and reasonable attorneys fees. Authorizes the Attorney General to move for injunctive relief, take proof, and issue subpoenas. Authorizes a court to impose a civil penalty of not more than \$1,000 upon a finding of gross negligence. Imposes a two-year statute of limitations on such actions. Defines all terms utilized under this section.

ESTIMATED FISCAL IMPACT:

NOT SIGNIFICANT

Assumptions:

- Currently, public utilities or wireless communications providers are essentially immune from criminal liability relating to the interception of cellular or cordless telephone transmissions where the acts of such utility or provider are for the purpose of construction, maintenance, conduct, technological research, or operation of the services

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and facilities of the public utility. Narrowing this protection could result in additional violations by utilities or wireless communications providers, but will not result in a significant state or local fiscal impact for any increase in prosecutions under this section.

- Placing restrictions on telecommunications carriers and third parties regarding the use of subscribers' personally identifiable information will not result in a state or local fiscal impact.
- The carriers will give any required notice in regularly scheduled correspondence with subscribers without incurring additional costs.
- The number of violations resulting in applications for injunctive relief filed by the Attorney General will not be significant and can be accommodated within existing resources. As specified in the bill, the Attorney General will recoup costs as provided in Tennessee Rule of Civil Procedure 54.04.
- Any findings of gross negligence resulting in assessments of civil penalties are estimated to be not significant.
- A small increase in cases in the court system brought by aggrieved subscribers against carriers or third parties will result in additional state and local government expenditures for processing the cases and additional state and local government revenue from fees, taxes and costs collected. These expenditures and revenue are estimated to be not significant.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise".

Lucian D. Geise, Executive Director

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